Complaints of the Extensionists—Their Falsity.

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SPEECH

OF

HON. PHILEMON BLISS, OF OHIO,

IN THE HOUSE OF REPRESENTATIVES, MAY 21, 1856.

Mr. BLISS. It is some weeks, Mr. Chairman, since I sought the floor to express my views upon the subject which I now propose to discuss. Events have since crowded so thick upon us, that what I may say may seem almost out of time; and while Kansas, from the feet of usurpers, is stretching towards us for relief, and the lawful authorities, instead of rushing to the rescue, are in alliance with her enemies, I may find it difficult to enlist attention to anything but her immediate wrongs and rights. But Kansas, supposed too prostrate for action, has succeeded in arraying herself in the "robes of sovereignity," and with bayonet at her breast, yet with the the fearlessness of integrity, asks but for authority to annihilate the usurpers. Her case will be soon before us, and I believe our action will vindicate the popular verdict upon the faithless attempt to enslave her. Till then, we may consider questions that will be living when the Kansas struggle shall have passed, if there pass not with it the substance of our common freedom. Yet, I cannot but first note the extraordinary efforts of the President, and which have so surprised us, to aggravate the slavery agitation, to alienate and sectionalize the people, to defame those who would strengthen and extend the great principles of law common to all the States, while extolling the devotees of sectional systems; and especially are we surprised at his assurance in presuming to vilify the people of the North, merely for their earnestness in opposition to his schemes for blackening the continent with African social organizations, and at his audacity in using mob and military power to coerce those who were to be left "perfectly free" to chose their own institutions.

Mr. Chairman, the race of Serviles has not run out. The enjoyment of the blessings of free institutions does not suffice to extinguish the meaner passions. Republics still furnish Swiss Guards. Those who once flourished by the African slave trade, and whose influence made New England yield to the demands of the Carolinas and Georgia, that it be fastened for twenty years upon the young Federation, did not die childless. The East—and I regret to have to add the West—still furnishes those who seek not judgment, but who "love gifts and follow after rewards"—who, for a consideration, will not hesitate to sell out the free West—who will not hesitate to libel the States that bore them, or which gave them power to sting. To the Representatives of the slave interest here I can only say, make the most

of them. Our free churches, free schools, and free presses, which so shock your nerves, are doing their work; and even if your impoverishing systems shall leave you anything to barter, you will soon find that—at least our people have outbid you. You taunt us with the fact, that our fathers permitted a few of their mercenary tradesmen and mariners to engage in the practice—lawful as you call it—of hunting men and stealing women in Africa for your fathers to buy. We do not mean that our complicity in kindred crimes shall give your children the power to call the blush to the cheeks of those we leave behind us.

But it is not of our mercenaries that I propose to speak, but to their masters, and of such of their complaints as are based upon the

REPUBLICAN PURPOSE.

WE DESIGN TO PREVENT THE EXTENSION OF SLAVERY INTO ANY OF THE TERRITORIES. The legal power to do this cannot be questioned; and if any poor wanderer is yet groping his way by the Will-o'-th'-wisp of the Nicholson letter, I commend him to the argument of the gentleman from Pennsylvania, [Mr. RITCHIE,] or to that of my colleague, [Mr. STANTON.]

COMPLAINT FIRST—RIGHTS OF THE SOUTH INVADED.

But, Mr. Chairman, this is claimed to be a sectional measure, and complaint is made that by it the rights and interests of the South would be invaded. If so, the complaint is just, and we should desist, for we are no sectionalists. But pray tell me who constitute "the South?" Of course, in this connection you do not count your slaves; nor can it be claimed that the rights and interests of your non-slaveholders would be violated by such non-extension. The more industrious and intelligent of them have flown and are flying from the effects of Slavery. My country is filled with them; and it is because they would *protect* their 'rights and interests," and their own equality, that they would escape the influence of Slavery. Though those remaining with you are more than nine-tenths of your white population, yet they, I suppose, are not "the South." "The South," then, consists of its slaveholders; and what interests, pray, of slaveholders, are jeoparded by Slavery restriction? Clearly they are not deprived of the proceeds of the labor of their slaves. A given number of hands will produce just as much cotton or sugar or tobacco, whether Kansas or New Mexico be free or slave, and its market price will be just as high. Indeed, the consumer of slave labor is rather interested in the restriction of Slavery, for with every expansion the price of the laborer, and consequent cost of production, is increased. The only ones, then, interested are those who have slaves to sell; and they, it seems, are "the South." Let it, then, be understood, that when the rights and interests of the South are spoken of, you mean the rights and interests of those who rear men and women for the shambles! The time was when "the South" had another sense, and her sons would have blushed to own her complete identification with human traffic. And if it has come to this, God forbid that I should show any respect for such "rights," for such "interests."

COMPLAINT SECOND—INEQUALITY.

But we are accused of denying the equality of the citizens of the States; and all the appeals, denunciations, and threats of treason, which falls so thick upon us, are based upon the accusation.

The assumption is simply this—that if the laws of the Territories shall not permit the citizens of slaveholding States, who at home have held persons in bondage, from thus holding them in the Territories, then

they are denied a perfect equality with citizens of the free States; or, in other words, if Congress shall refuse to permit the establishment of the local laws of the slave States in all the Territories, it thus refuses to protect the equal rights of the emigrating citizens of those States.

Now, to this complaint it is enough to say—

1. No personal privilege is denied to an emigrant from a slave State, which is not also denied to emigrants from the free States; hence there is no inequality.

2. So far as law is concerned, the very demand is a claim for superiority, and not equality. The extension of the law of Slavery would subvert its opposite, and give it a superiority under pretence of equality; for the law that enslaves a man, and the law which protects him, cannot co-exist.

3. The complaint assumes that the laws in the Territory must be made to conform to the laws of the several States, at least in relation to "persons held to service." Now, in view of the fact, that there is great disagreement between the laws of the States upon this subject, some allowing abject servitude, and others permitting only the natural and common-law subjection, and that modified of wives, minors, and apprentices, the absurdity of the complaint clearly appears. Either the laws of all the States must be in force in the Territory, which is impossible, or the laws of some particular State, or laws independant of those of any State. Or, the complaint assumes,

4. That each emigrant should carry his own State laws with him. Is that possible? Have laws any extra-territorial force? Law is a municipal regulation; does it extend beyond the *municipium?* Is a Territory like the high seas, where all nations have equal rights, and the flag of every nation carries upon its own ship the nation's jurisdiction? Are the rights of the dwellers of each hamlet to be decided by the laws of their parent State? And yet the gentleman from Georgia, [Mr. WARNER,] if I understand him, assumes this doctrine. After citing the case of a Spanish vessel laden with slaves, which was seized by a British cruiser, and the seizure held illegal, he says:

"The slaves were not taken by the Spaniard into the Kingdom of Great Britain, in violation of her laws, but were seized upon the great highway of nations, upon the empire of the seas, upon *common ground*, where the Spaniard had as much right to be with his property as the Englishman; and the principle would have applied with equal force if the slaves had been seized upon common Territory, the joint property of Great Britain and Spain. The same principle is applicable to the common territory of the Union, which is common ground, being the joint property of all the States, where the citizen of Georgia has as much right to be with his slave property as the citizen of Ohio has to be there with his property—neither violating any law of that Territory by going into it with their property."

The character of this reasoning will appear, when we consider that the high seas belong to no nation, federation, or confederacy, and that they are, and *can be*, subject to no municipal code, but the law of each nation follows its own ships wherever they go. Slavery and the slave trade were then held to be lawful in Spain, and, therefore, slaves on board Spanish ships could not be discharged by English law. The ship was still Spanish, its domicile was Spain, and it was subject only to Spain's law. But each Territory must have municipal laws of its own, and they are uniform in every part of the Territory. Can there be one law for the farm of the emigrant from Georgia, and another for the farm of the emigrant from Ohio? And what if the two emigrants own and occupy a farm in common, perhaps intermarry, the law of which State shall govern? Neither is it true that the Territories are the common property of the States, as such They belong to the Federation as a unit; and each citizen owes allegiance to the Federal Government alone. They bear

no analogy to a country belonging to two independent sovereignties, as the gentleman has supposed; and even if they did, it would not matter; for if Great Britain and Spain held a common territory, it must have municipal laws; and the relations of persons and the rights of property would be controlled by its own municipal laws, and not by those of the joint sovereigns.

COMPLAINT THIRD—INVIDIOUS DISTINCTIONS.

But complaint also is made that, by prohibiting Slavery in the Territories, Congress would make improper and invidious distinctions against the laws of the slave States. This complaint is also based upon the unfounded assumption, that the law of slavery —if I may be pardoned the seeming paradox of calling that law which is but the denial to its victims of the law's protection— from its CHARACTER, INFLUENCE, and ORIGIN, has equal claims to the favor of the Federal Government with the principles of the common law, or the law of Freedom. If this be true, then I admit that the complaints of the Slavery extensionists are well founded, or at least that there should be a division of the Territories. *Slavery therefore, itself is put in issue;* gentlemen compel us to test its claims.

CHARACTER OF SLAVERY.

By the *character* of Slavery I refer not to the cruelties or kindnesses of slave-masters, but only to its distinguishing and essential legal features; and, in doing this, I shall but briefly allude to a few of them.

1. Slavery is hereditary. Because one has succeeded in enslaving the parent, therefore he has a perfect right to enslave his posterity, and according to the degrading and demoralizing rule of *partus sequitur ventrem*. Like the ox and the horse, the owner of the dam owns the increase; while in every other hereditary relation the child follows the condition of the father.

2. Slaves cannot contract legal marriage, and there can be no such thing as the lawful family relation among them. When they follow the instincts of religion and affection, as best they may, their union is subject entirely to the irresponsible will of others. Let him who can measure the influence of sacred domestic ties upon civilization and character, characterize such legal atheism. I can find no fit words!

3. Slaves can hold no property. The acquisitive instincts—the greatest of human civilizers—are denied lawful exercise. Says Crenshaw, Justice, in Brandon *et al. vs.* Planters, &c., Bank, 1 Stewart's Rep., 320:

> "A slave is in absolute bondage; he has no civil right, and can hold no property, except at the will and pleasure of his master; and his master is his guardian and protector; and all his rights, and acquisitions, and services, are in the hands of his master. A slave is a rational being, endowed with volition and understanding like the rest of mankind, and whatever he lawfully acquires and gains possession of, by finding or otherwise, is the acquirement and possession of the master. A slave cannot take property by descent or purchase."

4. Their persons are without the law's protection; and they are in general subjected to any treatment dictated by the interests or passions of the possessor. This subjection has been of late modified by enactments against willful murder, assault with intent to murder, and in some States are found regulations as to food and gross abuse. But the legal disabilities of the slave are such, that these provisions are of necessity at the master's discretion; and the essential character of Slavery justifies the master, or temporary possessor, in the use of any force he may deem necessary to induce absolute subjection, even though life be taken. The case is clearly put by Judge Ruffin, of North Carolina, in the State *vs.* Mann, 2 Devereux, 263, when he decided that the hirer of a slave-woman, who refused to submit to a

flogging, might lawfully shoot at and wound her; and the court declared that the power of the master must be absolute; that, though contrary to moral right, this discipline belongs to a state of slavery, and is inherent in the relation of master and slave; and adds:

"We cannot allow the right of a master to be brought into discussion in a court of justice. The slave, to remain a slave, must be made sensible that there is no appeal from his master—that his person is in no instance usurped," &c.

I speak not of those refinements of American slavery—forbidding letters, forbidding honorable employment, forbidding assemblies, forbidding locomotion, forbidding emancipation, and forbidding even to the dominant class freedom of speech; they are but its incidents and tributes to the rebellion of nature against its enormities.

INFLUENCE OF SLAVERY.

But perhaps the *influence* of these provisions, at least upon the dominant class, is benign; perhaps laws have ceased to react upon character; perhaps human nature is so changed that the denial of the sanctions of marriage to servants, though a majority of the people, while character is to them valueless, and self-defence denied, guards the decencies of life; perhaps, for the commerce of civilized nations, the substitution of a traffic in their sons and daughters develops the resources and increases the industry and dignity of States; perhaps absolute power generates the milder virtues, exalts the sense of justice, and promotes habits of self-control. Let us see.

Such is the natural aptitude of the negro to improvement, that, unless in the heavy planting regions, in spite of the laws, he may make some progress. But slavery brings him into an unnatural contact with the white man, and how does that contact affect the latter? We sometimes hear of the tendencies of nature towards an equilibrium; are the negro's wrongs avenged by this tendency? I would not intimate that the white race is necessarily degraded by contact with the black; that would depend entirely upon the character of the contact—upon the sentiments or passions developed by it. He who seeks the elevation of the low, himself is elevated; while he who would keep them down himself sinks. Such is the universal law; and the inquiry now is, whether that law is suspended in favor of Slavery; whether the general influence upon the dominant race, of a class oppression, vindicates justice? We are told, that "what a man soweth, that shall he reap;" and Jefferson, speaking of the surroundings of Slavery, from its midst, says; "The man must be a prodigy who can retain his manners and morals undepraved by such circumstances." Whatever elevation or excellence of individual character there may be, and no man more highly appreciates those many excellencies than do I, the general influence of slavery upon the country and the white masses is visible to the most superficial observer. It is seen in the perversion of Christianity; in the degradation of labor; in the blighting of the soil; in the thriftless indolence of the masses, and their consequent ignorance and poverty; in their subjection to the adverse interests of a privileged class; in the parti-colored complexion of the denizens of kitchen, plantation, and slave-pen; in the supremacy of force over law; in the recklessness of life; in the almost total subversion of that freedom of thought, and freedom of speech and the press, the essential attendants, and among the chief ends of all free Governments; and in that lowest of all results of wrong-doing, such a loss of the moral sense as to blind the wrong-doer to the character of his acts; all which are witnessed in such large portions of the country, and in proportion to the predominance of Slavery and the slave spirit. I am happy

to know that these influences are not yet universal and complete, for in no State is free labor yet entirely supplanted.

These allusions to the character and influence of slave laws are necessarily very brief —full fidelity would require volumes—yet they are exceedingly painful. I would gladly forget that our country is so dishonored, and, worst of all, that men will glory in their shame. But the extensionists and their President have forced the discussion upon us, and I have never learned to let squeamishness stand in the way of duty.

ORIGIN OF SLAVERY.

But perhaps the *origin* of the slave code will inspire reverence. Whence, then, came the anomaly? Did the grim form spring, full grown and armed, from the western wave? Or did it skulk in the hold as the colonist left the home-land, and follow him with his other household gods? Or is the incongruous thing an exotic? It may seem idle to look back in our struggles with the present; but to me, in the onward traverse, ever looking back, but for line, having no more faith in syllogisms merely, in law and politics, than in philosophy, guiding my feet alone by the instincts of justice and the "lamp of experience," the origin of a system of government, or system of laws, and its effect where indigenous, possesses great significance; and, besides, I have become sick of hearing the antiquity of Slavery, of the slaveholding habits of patriarchs and philosophers. I have no doubt that the slaveholding spirit is as old as sin, and that Cain would have enslaved Abel if that would have better gratified his passions; but I do not mean that African Slavery, ancient though it be, shall filch respectability by assuming a stolen crest.

Not from the Common Law.

The American slave code was not derived from the English common law. It is wholly unlike common law villanage—the only English servitude. The marriage of a villain was as valid as that of his lord, and both were consecrated by the same sacrament. Like other hereditary conditions, that of the father followed the offspring; contracts with villains were lawful, and caused their liberation; the bastard was presumed to be begotten by a freeman, and was free. Villains regardent were attached to the soil, and protected in their homesteads as in their family relations. The number of villains in gross was always small, and no evidence is found of their existence in England for centuries before the settlement of Virginia; and even the mildest form of serfdom had faded before the progress of the common law and the influence of religion, not yet the ally of oppression. Besides, the courts of Westminster have often decided that colonial slavery was never lawful in England. The celebrated Somersett case, and the case of Forbes *vs.* Cochran, (2 Barn. & Cress., 463,) are conclusive. But in the absence of these decisions, where is the evidence that chattel slavery was ever lawful in England? Dig up the records, and give us the proof. Surely such a custom could not have existed for centuries, "from the time when the memory of man runneth not to the contrary thereof," and baron and peasant, and bench and bar, be ignorant of its existence. And, besides, every maxim of the common law breathes justice, and its whole machinery is contrived to guard rights, not to intensify wrongs. It had excrescences, but none like Slavery. Whatever of political privilege or personal security the Briton enjoys beyond the Russian, or the citizen of the Ohio beyond the Mexican, they owe to the successful contests of the Anglo-Saxon with the enemies of the common law. Let it never be cited in favor of any form of oppression.

Not from the law of Nations.

The gentleman from Georgia labors with some plausibility to trace the right to property in man to the law of nations, and through it to the common law. But his argument is based on the assumption that the law of nations can decide what is and what is not property. Property is derived from the law of nature, or from the municipal law, and not from the law of nations. The latter may take notice of what is property, but it does not establish it. Can it be said that the importer derives from the law merchant his right to treat as property his pipe of brandy or bale of silks? "The law of nations is that code which defines the rights and prescribes the duties of nations, in their intercourse with each other," (Kent.) And under it each nation, in its intercourse with other nations, will, in general, treat as property what that nation so regards, and while it is within its exclusive jurisdiction, however repugnant to the spirit of its own laws. The authorities cited by the gentleman prove nothing more. Spain and some other States at that time permitted their citizens to buy or steal negroes in Guinea, and transport them in Spanish ships; and the only point decided was, though with some looseness of phraseology, that the rule of intercourse between nations—*i. e.*, the law of nations—would not permit any friendly nation to interfere to prevent it. So the law of nations may decide the ownership of property, as prizes in war. But it does not decide that to be property which is so taken. Suppose, in war, an English privateer should capture a Brazilian slave ship, the property on board would be lawful prize, and belong to the captor. But would the slaves be property? Certainly, if the law of nations so decides. But, no. The domicil of the captured ship immediately becomes English, and all that the law of nations does is to transfer the dominion of the ship to its English captor, and by its agency Brazilian slaves become British subjects and freemen.

So far from the modern law of nations authorizing, or even giving color to, domestic Slavery, its fundamental principle, of the equality of nations, as based upon the natural equality of man, is directly hostile to it. Says Vattel:

"Since men are naturally equal, and a perfect equality prevails in their rights and obligations, as equally proceeding from nature—nations composed of men, and considered as so many free persons living together in the state of nature, are naturally equals and inherit from nature the same obligations and rights."

And yet a nation may not prevent the internal wrongs of other communities; for, says our author:

"A nation, then, is mistress of her own actions, so long as they do not affect the proper and perfect rights of any other nation. * * * If she makes an ill use of her liberty, she is guilty of a breach of duty; but other nations are bound to acquiesce in her conduct, since they have no right to dictate to her."

Again:

"It is therefore necessary, on many occasions, that nations should suffer certain things to be done, though in their own nature unjust and condemnable; because they cannot oppose them by open force, without violating the liberty of some particular State, &c."

But it is a confusion of ideas to say that men have a right to do a thing because foreign nations may not prevent it, and a legal absurdity to trace title to property to such forbearance. True, there was a time when Slavery had something to do with the law of nations; when the rules of intercourse between States at war, permitted the slaughter of captives—men, women, and children; and when their enslavement was a forbearance. We hence find Grotius exceedingly learned in elucidating the inhuman customs of the ancients, and correctly tracing the right—pardon the word—to enslave captives, to the rules of intercourse between nations. Gentlemen admit that this law has made some progress. The next step

will be to depart from neutrality; to place the slave-trader where he belongs—beside the common pirate.

Not from the Civil Law.

Neither is the civil law the source of our slave code. Slavery had produced in the Roman Empire its legitimate results. It had driven out industry, barbarized the people, exhausted the soil, and cured itself by involving both master and slave in common subjection. The new systems which, in the thick darkness, laid the foundations of modern civilization, contained as much of Christianity and Freedom as the darkness could comprehend. They certainly were purged of chattel Slavery, as its legal foundation had been destroyed in the overthrow of the barbarous maxim, that prisoners of war might be slain or enslaved. Nor have I learned that any State whose jurisprudence was founded upon the civil law, gave laws to any of the English colonies.

Not from Moslem Law.

But some suppose the colonists adopted the Mohammedan slave code. The Spaniards, after expelling the Moors, are said to have imitated, to some extent, their practice of slaveholding; and, judging from the similarity in the justifications of Slavery by some of our religious teachers and the Islam doctors, there is some speciousness in the supposition. The spirit of the following extract from the journal of a Mohammedan traveller has doubtless commended the author to the favorable consideration of those divines who have shown such zeal in canonizing oppression.

After detailing the horrors of the slave hunts in Africa, the author adds:

"Only the very strong or the very fortunate reach as far as Egypt. I have seen Jellabo leave Wadai with a hundred slaves, and lose them all by cold; and others have been deprived of still greater numbers, by heat and thirst; whilst others again, out of a single flock, find not one wanting. All this depends upon the will of the Most High.

"Our holy law permits the sale and exportation of slaves, but on the express condition that we should act with the fear of God before our eyes; which sentiment, indeed, should be the guide of all our actions. The reasons by which Slavery is justified are these: God has commanded his prophet, the prophet of Islam, to announce the divine law to men, to call them to believe in the true God, and to employ the force of arms to constrain unbelievers to embrace the true faith. According to the divine word itself, war is the legitimate and holy means to bring men under the yoke of religion; for, as soon as the infidels feel the arms of Islam, and see their power humiliated, and their families led away into slavery, they will desire to enter into the right way, in order to preserve their persons and goods."—*Travels of Shiek Mohammed, an Arab merchant, pp.* 297–8.

Islam servitude is entitled to the higher consideration of those who believe that "God has made of one blood all nations of men," as it is not at all sectional or exclusive in its character. All, whether European or African, can find shelter in its fold from the sin and dangers of unbelief; and when once in, it would be wrong of course to endanger backsliding by emancipation.

But for two considerations, I might suppose that colonial Slavery originated in Moslem law. First: the only intercourse between the colonies and the Mohammedan States was through those whom fortune threw into the hands of the corsair, and, being themselves fugitives from slavery, we do not learn that the few who escaped desired to bring the laws with them. Second: while Moorish and American Slavery agree in general, they differ in one important particular. By Moslem law, *a slave who bears issue to her master ceases to be transferable, and the issue is free.*—(See Lyon's Northern Africa, p. 289.) The striking contrast between the two systems, in this respect, will appear, when we consider that no obstacle is thrown in the way of the advancement to any station of the offspring of the Turk or Saracen and his slave; while in America, the father and owner of bastard slave families is permitted to send them to the auction block; and though the fact of the paternity is no disgrace, yet an acknowl-

edgment of its duties is considered a public indecency, and a fraud upon the slave system.

But is from African Law.

But there is a country blest with the "institution" from the remotest antiquity, and whose slave laws must commend it to the affectionate regard of all propagandists. In Western and Central Africa, slaveholding is the true "corner-stone." Slaveholders are the only aristocracy: and slaveholding ideas have so thoroughly taken possession of the people, as effectually to shut out all antagonist "isms." The discordances of Abolitionism, Free-Soilism, and Republicanism, are not permitted to disturb the reign of free-loveism, barbarism, and terrorism. Soon after the settlement of the earlier colonies, a trade was opened with this country, principally to procure laborers; and Hawkins and his successors industriously followed the methods of obtaining them long sanctioned and sanctified by African law. These methods were either purchase, or, when more convenient, the slave hunt—for by settled law all seized in the hunt were presumed to be slaves, and it was found somewhat difficult to rebut that presumption; and such was their success, that soon the banks of the Jameses, the Ashleys, and the Hudsons, were well stocked with captives from the Guinea coasts. But the inquiry naturally arises, By what law were these men compelled to labor after their importation? No statutory slave code was adopted, and no customs could have existed long enough to have the force of law; and yet they were held under customs or regulations similar to those which are now called law. These customs, to have been legal, must have been ancient or immemorial; and having no antiquity at home, they must have been naturalized from abroad. They could not have come from the mother country, for none there existed; and while she gave the colonies the common law, she gave no other. They could not have been derived from the civil law, for no political intercourse was held between countries adopting it and the colonies; and that part of the civil law adopted in Europe was purged of those customs. They could not have sprung from Islamism, from want of voluntary intercourse, and from material variance. Whence, then, I again inquire, came those continuous and immemorial customs by which these laborers were held in servitude? There is only one answer. The customs which enslaved them at home were, so to speak, imported with the slave. The various peculiarities of American Slavery had existed from "time immemorial" in Africa, and thus were adopted in the colonies. The absolute authority of the master over the person of the slave, over all his acquisitions, over his marital and parental relations, the presumptions in favor of Slavery, and the property maxim of *partus sequitur ventrem*, were all lawful in Africa from immemorial usage, and in the absence of legislation could only be made lawful in America by the planter availing himself of this African usage.

Chief Justice Marshall, in effect, confirms this proposition, in remarks quoted by a Senator seeking to trace Slavery to the law of nations. After showing that the enslavement of captives was once lawful, he adds:

"Throughout Christendom this harsh rule had been exploded, and war was no longer considered as giving a right to enslave captives. But this triumph had not been universal. The parties to the modern law of nations do not propagate their principles by force; and Africa had not yet adopted them. Throughout the whole extent of that immense continent, so far as we know its history, it is still the law of nations that prisoners are slaves. The question then was, could those who had renounced this law be permitted to participate in its effects, by purchasing the human beings who are its victims?"—*Wheaton's Law of Nations*, 635.

The Justice decides that this African usage was adopted by the European States, so far as to transfer slaves to the colonies, and hold them there.

Thus were domesticated the institutions of Africa alongside of the common law, and they have ever since divided our jurisprudence. I do not propose to decide whether such customs could have been lawful, under the provisions of the English charters. I leave that to the gentleman from New York, [Mr. GRANGER,] and to those who shall combat his positions. I have no love for them, and should not regret to see them deprived of legal sanction. It is enough for me to know that these customs were adopted, and, if lawful at all, were so by the laws of the Guinea chiefs, and not by civilized codes.

Such is the slave code — such its influence — and such its origin. In founding the young institutions for the Territories, we must establish it or guard against it. There is no middle course, for ours is the real responsibility, to whomsoever we may seem to shuffle it. Is the code so attractive that a discrimination against it seems "improper" or "invidious?"

COMPLAINT FOURTH — SLAVERY RESTRICTION UNCONSTITUTIONAL.

But, as if perceiving the transparency of these complaints, the Slavery extensionists take refuge in the Constitution, which, like the ancient shrines, is the eager skulking-place of those who would shrink from duties or shield crimes. They complain that Slavery restriction is a violation of the true spirit, if not the letter, of that instrument. First, we have the doctrine of the Nicholson letter, or "squatter sovereignty." Though Congress may, in the organic act, provide at its discretion for other things, it may not guard the only legitimate sovereignty, that of each man over himself; but the first few hundred or dozen squatters are to found systems for the Territories that may degrade or bless their future millions. This doctrine at the North assumed the specious name of "popular sovereignty," and reconciled the people in 1848 to the abandonment of the doctrine of the fathers; and its seeming embodiment in the Nebraska bill was there the only justification for that outrage. But it is now abandoned, and a few ancient retainers only are left to do homage to the famous Nicholson letter. As the doctrine of Territorial sovereignty arose, so it has fallen, with the fortunes of the distinguished Senator from Michigan. Would to God its abandonment had left us where we were, in the exercise of an undoubted sovereignty in founding such institutions for the Territories as should secure to their future people the blessings of "popular sovereignty!" But one heresy only prepares for a worse.

The new doctrine, as well as that of the Nicholson letter, is so utterly opposed to our uniform practice, to the decisions of all the courts, State and Federal, that I hardly suppose gentlemen regard it as constitutional law as yet: but rather as a political obligation arising from the Constitution, which they claim should be recognized in all our political action, upon which they have compelled the Administration to base its policy, and which they soon expect to establish as law.

In a recent report, the Senator from Illinois repudiates the northern construction of the language of the Nebraska act, purporting to leave the people of the Territory "perfectly free" to admit or exclude Slavery. He says that "the sovereignty of a Territory remains in abeyance, suspended in the United States, in trust for the people, until they shall be admitted into the Union as a State;"

and I suppose, if they never are so admitted, this sovereignty is always "in abeyance," *i. e.*, waiting for something to turn up; "suspended," *i. e.*, not to be used, but hung up, perhaps for ornament; "in trust," but without a use, forever "hid in a napkin," and therefore no trust at all.

The gentleman from Pennsylvania, [Mr. JONES,] in a colloquy with the gentleman from Kentucky, [Mr. Cox,] thus announces the views, I suppose, of the Buchanan interest:

"I believe that Congress has the power to confer upon the people of a Territory the right to legislate upon the subject of Slavery, when they are forming their organic law, preparatory to its admission into the Union as a sovereign State; but prior to that time, they have no right either to establish or abolish slavery." * * *

"I have said already, that, in my opinion, the Constitution limits the power of Congress to the extent of prohibiting them either from establishing or abolishing Slavery in the Territories. Admitting that view to be correct, I suppose it follows, as a matter of course, that the Constitution of the United States confers upon the people of the Territory no right to dispossess any man of his right to property, whether it be slave or any other property. And, therefore the Legislative Council of a Territory, though they may pass laws regulating the disposal and protection of property, have no right so to administer those laws as either to establish or abolish the right to hold that property."

"Mr. Cox. * * * I understand the gentleman, however, to say, that by the Constitution of the United States, Congress having no power over the subject of defining what is and what is not property, if a slaveholder goes to the Territory of Kansas with his slaves, he still holds them as property, and may claim the right of protection for that property.

"Mr. JONES. Undoubtedly. The Government recognises as property what it finds there as such, having no power to say whether it is or is not property. I think my friend from Kentucky agrees with me there.

"Mr. Cox. Certainly, I do."

I do not know as the gentleman from Pennsylvania intended to acknowledge the full extent of the Southern claim as hereafter given, but it prepares the way for the assertion of the universality of slavery, and which I find here the almost universal claim of slavery extensionists. The gentleman from Georgia [Mr. WARNER,] has stated it with great distinctness, and I confess it gives me greater pleasure to hear the positions of slaveholders upon this question, stated with some appearance of logic, than to see the double shuffles and deceptions of their "popular sovereignty" allies. If I understand his position, it is this: that slaves were held as property in the colonies and States, by the law of nations, which became the law of the land, and that, under that law, the holders of slaves acquired absolute rights of property in them. The conclusion I give in his own words:

"Those great fundamental rights which I have been discussing, belonged to the people of the the States before and at the time of the adoption of the Constitution. They entered into, and constituted an essential element of, their title to their slave property, part and parcel of it; and, not having delegated them in the Constitution, they have them now; and it is by virtue of those *pre-existing* rights, which are solemnly guaranteed by the Constitution, that my constituents claim to be entitled to take their slave property into the common Territory, and to have it protected there."

The gentleman from Kentucky [Mr. Cox] has, during this session, stated the doctrine in a still more revolting form:

"So far from the dogma presented by Northern men, that slavery requires positive law to protect it, being true, I believe the law *prima facie* is that wherever a negro is found in the United States, or Territories thereunto belonging, there he is a slave; and such has been the received opinion by custom and adoption, as shown by early history; and, until you show a positive law to the contrary the negro is a slave wherever he is found in the United States. We don't want any positive law to support slavery. There is not a Southern State which has created slavery by positive adoption. It has been established by custom and common consent, in the same manner as it was established in Massachusetts and New York; and those States made a great deal more money out of it than we have. There is no law in the South making slaves property. Property in slaves exists on the same basis as other property. Property arises as a natural right, over and above all law, and such it is recognised the world over by common consent. And the colonies having, by custom and common consent, assented to and established the right of property in negro slaves, that kind of property stands to this day on the same basis of other species of property, so far as the power of the Government is concerned; and Congress has no more power over it than it has over property in horses or any other chattel."

* * * * * * *

"If Congress could confer power on the people of a Territory to prohibit slavery during their Ter-

ritorial existence, it might exercise the power itself, without committing it to the people of the Territory. This power, sir, I deny, and believe that the Constitution of the United States does not authorise Congress to destroy the right of property in the States, even though that right should be carried into the Territories. The Territories are the common property of all the States; and if Congress, as is admitted, cannot destroy or affect property in slaves in the States, how can it destroy or control it in the Territories? No, sir; whatever is recognised in any State as property must, under the Federal Constitution, be regarded as property in the joint and common Territory of all the States."

So far as I am able to learn, these are very modern opinions, and originated, with other heresies, in the fertile brain of the late Mr. Calhoun. They were advocated by him often and ably in the latter years of his life; and, though first treated as chimerical, are now adopted even by Kentucky! I have now before me a speech delivered by him in the Senate, June 27, 1848, in which he elaborates the doctrine with his accustomed ingenuity, and shows that the Federal Government possesses the exclusive power, in the nature of a *trust*, to govern the Territories, subject to restrictions, express or implied. The former are the express provisions of the Constitution; the latter are "those imposed on the trustees by the nature and character of the party who constituted the trustees," which he claims to be the States in severalty. "In the States, severally, reside the dominion and sovereignty over the Territories, and they are the Territories of all [the States,] because they are the Territories of each, and not the Territories of each because they are the Territories of all." Adding the admitted equality of the States, "it must be manifest that Congress, in governing the Territories, can give no preference or advantage of one State over another." "It has no more power to do so than to subvert the Constitution itself." He hence claims that Slavery must be legal in all territories, because it is in some of the States. And, in alluding to the laws of Mexico in California, prohibiting Slavery, and which were claimed to be still in force, he adds:

"But I deny that the laws of Mexico can have the effect attributed to them. As soon as this treaty between the two countries is ratified, the sovereignty and authority of Mexico, in the Territory acquired by it, becomes extinct, and that of the United States is substituted in its place, carrying with it the Constitution with its overriding control over all the laws and institutions of Mexico inconsistent with it."

It will be recollected that this doctrine was the special hobby of the present Secretary of War while in the United States Senate.

I have gone somewhat into detail in stating the present doctrines of the slavery party, because they are denied by the Administration party in my country, and it is difficult to make people there believe that such principles *are actually being applied to the government of the Territories*. But so it is. These novelties have become tests in our Territorial administration. Slavery is the rule—the power of its prohibition by any authority whatever denied, and the Federal Constitution its shield and protector!

I well recollect the sneer with which this idea was received, North and South, when it first attracted attention. Mr. Clay, in reference to it, remarked:

"I must say, that the idea that *eo instanti* upon the consummation of the treaty, (the treaty of Guadalupe Hidalgo,) the Constitution of the United States spread itself over the acquired country, and carried along with it the institution of slavery, is *so irreconcilable with any comprehensions or any reason which I possess, that I hardly know how to meet it*."

And yet it is now substantially the doctrine of the Government party, and substantially the doctrine of the leaders of that other party styling themselves National Americans, and, with Nativism, was the basis of their coalition to organize this House. Such is the progress of fanaticism, when led by passion and lust of power.

I confess, the impudence of this claim, its bold sophisms, and false assumptions,

amaze me, and, in contemplating it, I feel somewhat the embarrassment of the great Kentuckian. Because slavery was lawful in the colonies and most of the States previous to the adoption of the Constitution, and is still lawful in some of the States, therefore it is lawful by force of the Constitution in all the Territories. Place it in the form of a syllogism.

1. Whatever was lawful in the colonies, and is still lawful in any of the States, must be lawful in the Territories.

2. The practice of enslaving men was, and is thus, lawful.

3. Therefore, slavery is lawful in the Territories.

Corollaries: the right of distress, and the practice of imprisoning for debt, very important property rights, were lawful in the colonies, and are still in some of the States; therefore they cannot be prohibited in the Territories. The right of gambling by lotteries existed in the colonies, and still does in some of the States, and heavy capital is invested in the business; therefore, the right is a sacred one in all the Territories. And these rights, too, have always existed by the law of nations, *i. e.*, the law of nations has nothing to do with them.

It would seem that the statement of the proposition would alone be sufficient to show its absurdity. But when men would guard great wrongs with the shield of logic—wrongs enthroned in passion and interest—they lose their vision; the thin gauze becomes brass, and they fancy themselves—and sometimes their enemies fancy them—safely shielded by the gossamer. But let us examine these constitutional claims a little more in detail.

Gentlemen on this floor have placed great stress upon the claim that, previous to the Revolution, slavery and the slave trade were authorized by the law of nations, were universal in the colonies, and sanctioned by the mother country. I have already shown that the law of nations could not constitute property, and admitted that by usage persons were held as slaves. It is true, I have also shown that this usage could not have been lawful, not having been immemorial, unless derived from and availing itself of the immemorial usage of Africa; but I am willing to admit for the present, its entire lawfulness. And what follows? This usage was contrary to the law of nature and the legitimate object of Government; contrary to the municipal laws of all civilized States; was grossly tyrannical in its character, and destructive of every social and material interest in its effects; and yet gentlemen gravely claim that it would be a violation of the constitutional rights of the slave-ridden States to protect the Territories from this blighting usage! Mr. Calhoun was in the habit of basing the claim, not upon any fictitious "constitutional guaranties," of which men speak so flippantly, but upon the bold and unfounded assumption that the Territories belonged to the States in severalty; that the Federal Government held them in trust for each of the States, and must govern them with reference to the supposed interests of the States. Such was the theory of colonial rule. Colonies were founded, and, as far as possible, slave usages introduced, not to promote the permanent well being of the colonies, but with all possible rapidity, and for the benefit of the home country, to coin the fresh soil, and leave its future to retributive sterility. But the American Revolution overthrew all such theories. According to its doctrines, Governments are instituted to secure the rights of the governed, and not the interests of the governors. I admit, with Mr. Calhoun, that the power to govern the Territories is a trust—all Governments are in the nature of trusts—but

for whose benefit is this trust to be executed? Clearly for that of the *cestui que trust*, and not the trustee, or even the founders of the trust. THE TERRITORIES ARE THE *cestui que trust*, AND WE MUST LOOK TO THEIR RIGHTS AND INTERESTS ALONE. The fact that a different rule prevailed under colonial subjection is rather a beacon than a precedent. The claim, then, that the Territories are to be governed with reference to the interests of the old States, and not the good of the Territory, is based upon a fiction; is colonial in its analogy; contrary to the doctrine of the Revolution; and it cannot be presumed to be constitutional, unless the provisions of the Constitution are explicit to that effect.

It is claimed that, as there is no express power given by the Constitution over slavery, it is therefore unconstitutional to exercise such power. And is there any express power given in relation to crime other than Federal, in relation to rights of property, and the other thousand things appertaining to government? The powers of Congress in relation to Territories are altogether general in their character, and embrace *all* proper subjects of legislation. I care not whether it be derived from the clause giving authority to "make all needful rules and regulations respecting the Territory;" or, as Mr. Calhoun thought, from the power to acquire territory, necessarily carrying with it the power to govern; it must be general. There is no limit to it, except the express limitations of the Constitution, and in that respect is entirely unlike the Federal authority over States. Instead of there being a want of power in Congress to prohibit Slavery, because not expressly given, *it has power to do nothing else*. Congress, within its jurisdiction, is bound to carry into force all the provisions of the Constitution, and to prevent all wrong-doers from violating them. The guarantees of personal liberty and rights of property are inconsistent with slavery, and should be enforced; and the duty of Congress to make express enactments on the subject depends entirely upon the danger of their violation. Were there no such thing as theft, no enactments against larceny would be necessary; but the guarantees of property, as well as the unwritten powers of all Governments of general jurisdiction, demand its express protection, when and where necessary; and so of individual liberty. But, even if there were no such guarantees, I demand of those who require express powers for the protection of individual liberty, the power, express or implied, to infringe it. Liberty is the normal, and slavery a forced relation; "contrary to natural right," says Justinian; "a mere municipal regulation," says the Supreme Court, in Prigg *vs.* Pennsylvania. And I deny the power in the Government, unless clearly granted, to protect A in holding B in subjection, to adopt the unnatural and merely local regulation.

But, say gentlemen, slaves under the Constitution, are property, and hence, must be protected as property. That is begging the question. I demand the proof that, under the Federal Constitution, and within its exclusive jurisdiction, there *can* be property in man. Is it found in the contemporaneous declarations of its framers, that it would be wrong to admit in it the idea, and in their care not to do it? Is it found in the language of the instrument, were slaves within States are supposed to be alluded to, where they are described as persons, and persons only? Is it found in the provision, that no person shall be deprived of life, liberty, or property, without due process of law? Is it found in the avowed objects of the Constitution, to establish justice, to secure the blessings of liberty, &c.? If not, where

is it found? Gentlemen who make this extraordinary claim hold the affirmative. Bring forward the provisions of the Constitution which reduce man, whether white, yellow, red, or black, whether Saxon, Celt, Moor, or Mohawk, to the condition of a chattel.

But, says one, he is held as property by the laws of certain States, and therefore, by operation of the Constitution, he must be held as property in the common Territories. Indeed! and what provision of the Constitution operates to make the slave laws dominant, and to extend them, to the exclusion of others, into the Federal Territories? Am I answered, that the Constitution provides that no person shall be deprived of his property without due process of law, and hence cannot be deprived of slaves? But that, too, begs the question; for where, again I ask, is the authority for property in man? By the law of nature, a man is entitled to property in his own labor and his own earnings, and has the right to control both the one and the other; and do gentlemen *assume* that the Constitution gives to others property in this labor and those earnings? But perhaps gentlemen rely upon the provision for the delivery of fugitives from labor. This will not answer: for the conclusion, that this clause authorizes property in man, is not only a naked assumption, but is expressly estopped by its language; for they are "persons;" and only when they escape from one State to another State shall those *persons* be delivered up; and then the whole force of the provision is spent. The Convention better understood the force of language than do the propaganda; for the reason there given for changing a proposed phraseology to the present was, "because the former was thought to express the condition of slaves, and the latter (the one adopted) the obligation of freemen."

But, says another, the Constitution is a sort of "law of nations" between the States. It does not decide what is property, but treats as property whatever any State so regards. This may be, in a manner, true, *while this property is within the State's exclusive jurisdiction*. It is only true, however, because the Constitution, like the law of nations, with a single exception, has no jurisdiction in the premises, and, so to speak, cannot treat it at all. Suppose poor whites who are now free, as seems to be contemplated by some Southern politicians, should be enslaved; the case would not be altered. There is no Federal jurisdiction between citizens of the same State, and they may enslave one another, or murder one another, with impunity, so far as the Federal Government is concerned. But when these citizens come into Federal jurisdiction, as within Federal territory, then the Constitution ceases to be to them as a "law of nations," but becomes municipal law; and they are alike regarded as persons, and persons entitled to all its personal guarantees. Nothing can be plainer; and I am astonished at the effrontery, and almost impunity, with which men labor to debauch the national charter.

CONCLUSION.

I have shown that the complaints of the propaganda are baseless and the claims on which they are founded legal shams. But it is not a question of sectional interests or conflicting rights. It has no geography. It is a struggle of systems, a struggle of laws, a struggle of civilizations; and our duty in that struggle becomes a naked question of political justice and obligation. We cannot avoid responsibility for the political Constitutions of Territories previous to their organization into States. Shall we give them the African code, with as much of the

common law as can endure the base contact, or the common law republicanized, and without African taint? There can be no neutrality. We must discriminate, *and we are discriminating*. The base and bloody Guinea system has been forced upon Kansas, and every Federal officer is active in its imposition.

In the midst of the contest, I should ask pardon for the time spent in answering false complaints, were it not expedient to clear away the rubbish, lest some weak combatant should stumble in the fight. But their truth is really not in issue. We must not be drawn aside by them; they are intended for future application, if we survive the revolution initiated by the propaganda. For the first time in our history are we called on to legalize the acts of an invading armed force—a force which seized the ballot-box, filled it with foreign ballots, and inaugurated a Rump to give laws to freemen. The acts of this Rump are worthy their paternity—fit bantlings of the incestuous coition of the spirit of border-ruffian Democracy with the spirit of Gold-Coast barracoon jurisprudence! The slave power pronounces them law, and President and postmaster meekly echo the decree. They are being enforced as law, and we must rescue the victims, and damn the vile inventors!

In planting Slavery in the colonies, there was no parallel to this; and yet, how deeply have we heard Virginia curse Old England for her selfishness in the matter! What deeper curses will the future Kansas heap upon our heads for complicity in her debasement! And what is the motive? To perpetuate servitude, and to obtain fresh soil to desolate! Does colonial history furnish a match for such cold selfishness? Hear the gentleman from Georgia, before quoted:

"There is not a slaveholder, in this House or out of it, but who knows perfectly well that, whenever Slavery is confined within certain specified limits, its future existence is doomed; it is only a question of time as to its final destruction. You may take any single slaveholding county in the Southern States, in which the great staples of cotton and sugar are cultivated to any extent, and confine the present slave population within the limits of that county. Such is the rapid natural increase of the slaves, and the rapid exhaustion of the soil in the cultivation of those crops, (which add so much to the commercial wealth of the country,) that in a few years it would be impossible to support them within the limits of such county. Both master and slave would be *starved out;* and what would be the practical effect in any one county, the same result would happen to all the slaveholding States. Slavery cannot be confined within certain specified limits, without producing the destruction of both master and slave. It requires fresh lands, plenty of wood and water, not only for the comfort and happiness of the slave, but for the benefit of the owner."

We only need to look across the river, and all around us, to see that this exhaustion is not alone from cotton and sugar culture. *It follows your system*; and when you have desolated Kansas and Texas, and New Mexico and Utah—what then? Will you come upon us and demand our home-farms, enriched with willing sweat, to subject them to your exhausting process? *The end must come;* and the only question is, whether it shall be before or after the continent is ruined. Our country's salvation is in our hands, and cursed be the slave, or coward, or traitor, who shall betray the sacred trust!